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In the Supreme Court of the United States.

OCTOBER TERM, 1903.

JOSEPH R. BINNS, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 196.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

BRIEF ON BEHALF OF THE UNITED STATES.

MILTON D. PURDY,
Assistant Attorney-General.

18449

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STATEMENT OF THE CASE.

This case presents the question as to whether the act of Congress of March 3, 1899 (30 Stat., 1253, 1336), as amended June 6, 1900 (31 Stat., 321, 330), imposing license fees for prosecuting certain specified lines of business and trade in the Territory of Alaska, is constitutional.

The same question was before this court at the last term in the so-called Alaskan license cases, which are reported in the 187 U. S., 447, 454, 455, and 466. This court, however, in those cases, deemed it unnecessary to pass upon the constitutionality of this law, for the reason that the court below properly decided the cases upon other grounds.

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The plaintiff in error, Joseph R. Binns, was arrested at the city of Nome, Alaska, on the 8th day of January, 1902, upon a warrant issued by United States Commissioner T. M. Reed, *ex officio* justice of the peace. (Record, p. 2.) The warrant of arrest was based upon a written complaint made by one W. N. Landers upon oath before said commissioner on the 4th day of December, 1901, wherein the said Joseph R. Binns was charged with having wrongfully and unlawfully prosecuted and carried on the business of a transfer company without first applying for and obtaining a license so to do from the district court of the district of Alaska, second division, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America. (Record, p. 1.) The defendant was thereupon arraigned before the commissioner, and entered a plea of not guilty. On the 14th day of January, 1902, a jury trial not having been demanded by the defendant, the case was submitted to the commissioner upon an agreed statement of facts. (Record, p. 3.) On the 17th day of January, 1902, the commissioner found the defendant guilty of the offense charged in the complaint, and sentenced him to pay a fine of $10 and the costs of the action, and be imprisoned in the district jail until such fine and costs were paid, not exceeding ten days. (Record, p. 4.) The case was thereupon appealed from the judgment of said commissioner to the United States district court for Alaska, second division. (Record, p. 6.) On the 15th day of March, 1902, the case was called for trial before said district court, whereupon Mr. Fink,

the attorney for the defendant, stated that he and the district attorney would agree upon a statement of facts and would submit the case to the court for its decision. (Record, p. 7.) On March 22, 1902, Mr. Orton, one of the attorneys for the defendant, stated in open court that the defendant was willing to admit that all of the facts alleged in the complaint were true (Record, p. 7), and on the same day filed in the office of the clerk of said court the following pleading, which, while purporting to be an "Answer and plea" to the complaint, is substantially a demurrer (Record, pp. 7 and 8):

> In the United States district court for the district of Alaska, second division, on appeal from the United States commissioner's or justice's court for the precinct of Nome, second division, district of Alaska.
>
> UNITED STATES OF AMERICA, PLAINTIFF,
> *v.*
> JOSEPH R. BINNS, DEFENDANT.
>
> Comes now the defendant in the above-entitled action and answering and pleading to the complaint herein, admits that on the 4th day of December, 1901, in the district of Alaska, second division thereof, he did prosecute and carry on the business of a transfer company without first paying for and obtaining a license so to do from the district court of the district of Alaska, second division thereof; but the said defendant further shows to the court and alleges that section 460 of the act entitled "An act to define and punish crimes in the district of

Alaska, and to provide a code of criminal procedure for said district," approved March 3, 1899, as amended by section 29 of the act entitled "An act making further provisions for a civil government for Alaska, and for other purposes," approved June 6, 1900, under which said section the defendant is proceeded against herein is unconstitutional and void by reasons of the provisions of paragraph 1 of section 8 of Article I of the Constitution of the United States, which reads as follows:

"The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

Wherefore the defendant prays to go hence dismissed without day.

ALBERT FINK,
IRA D. ORTON,
JAS. W. BELL,
Attorneys for Defendant Binns.

On the 20th day of May, 1902, the United States district judge for the district of Alaska, second division, a jury trial having been expressly waived by the defendant (Rec., p. 10), and the case having been submitted to the court for its decision upon the answer or demurrer above quoted, found the defendant guilty as charged in the complaint of the offense of carrying on the business of a transfer company without having obtained a license so to do, and ordered and adjudged

that he pay a fine in the sum of $50 and costs. (Rec., pp. 11 and 12.)

The various provisions of the Alaska Criminal Code authorizing the prosecution of persons charged with a misdemeanor in the Territory of Alaska before United States commissioners, and providing for appeals in such cases to the district court, and the waiver of a jury trial, will be found under their appropriate headings in Appendix A to this brief.

The case is brought to this court on a writ of error directed to the United States district court for the district of Alaska, second division (Record, p. 16), and the provision of law authorizing such appeal is contained in section 202 of the act of March 3, 1899 (30 Stat., 1253, 1307). See Appendix A.

CONTENTION OF THE PLAINTIFF IN ERROR.

It is contended by counsel for the plaintiff in error that section 460 of the act of March 3, 1899, as amended by the act of June 6, 1900, imposing license fees for prosecuting certain specified lines of business and trade in the territory of Alaska, is unconstitutional for the reason that such law imposes a tax in disregard of the constitutional rule of uniformity.

CONTENTION OF THE GOVERNMENT.

The Government contends that such law is constitutional for the reason that Alaska is territory *belonging to the United States*, and that Congress is authorized to impose these license fees not by reason of the general power of taxation provided for in article I, section 8, of

the Constitution, but from the plenary power "to make all needful rules and regulations respecting the territory or other property belonging to the United States" (Article IV, section 3, paragraph 2), and that the exercise of such power is not subject to the provisions limiting the general power of taxation either as to apportionment or uniformity.

LEGISLATIVE HISTORY OF ALASKA PRIOR TO THE ENACTMENT OF THE CODE OF CRIMINAL PROCEDURE OF MARCH 3, 1899.

Before entering upon a discussion of the constitutional question here presented, the legislative history of Alaska should be briefly considered for the purpose of showing that the power to govern Alaska has ever been regarded by Congress as within the Territorial clause of the Constitution. In this connection I can do no better than resubmit that portion of the Government's brief in the Alaskan license cases wherein the political relations which have existed from time to time between that Territory and the United States are admirably set forth.[a]

Alaska was ceded to the United States by the treaty of June 20, 1867. (15 Stat. L., 539; see Appendix B.) Before that time it had been occupied and arbitrarily governed by a fur-trading Russian corporation, known

[a] In view of the fact that the constitutional question involved in this case was elaborately argued before this court in the Alaska license cases, I shall take the liberty of reproducing in this brief numerous verbatim extracts from the Government's briefs submitted in those cases without further acknowledgment. The presentation of the argument has been somewhat rearranged, introducing considerable new matter and suggesting some new points.

as the Russian-American Company. (*Kinkead* v. *United States*, 150 U. S., 483, 490; Appendix B.)

On July 27, 1868 (15 Stat. L., 240; Appendix B), the laws of the United States relating to customs, commerce, and navigation, so far as applicable, were extended to and over Alaska, and the Territory was constituted a customs collection district, with a port of entry at or near Sitka. By section 4 the President was authorized to prohibit the importation and use of firearms, ammunition, and distilled spirits in Alaska. The power given him was of the broadest character, authorizing the seizure and forfeiture of all such commodities exported from any part of the United States and destined for Alaska, as well as the seizure and forfeiture of the vessel conveying them. The taking of fur-bearing animals was prohibited and violations of law were to be prosecuted in the United States courts for Oregon, California, or Washington.

By the act of July 1, 1870 (16 Stat. L., 180), provisions were made to prevent the extermination of fur-bearing animals in Alaska. A limitation was placed upon the number of seals which might be killed for their skins upon the islands of St. Paul and St. George. The right to take fur skins there was to be leased and an annual rental paid for the privilege. And it was also provided that in addition to the rental "a revenue tax or duty of $2 is hereby laid on each fur-seal skin taken and shipped from said islands during the continuance of such lease, to be paid into the Treasury of the United States." The major part of the revenue

collected in Alaska has come from this source, the annual receipts amounting to over $225,000.

Thus the matter remained until the passage of the act of May 17, 1884 (23 Stat. L., 24; Appendix B), which for the first time provided any system of government for Alaska. The act of 1884 constituted Alaska a civil and judicial district (not a Territory), with a seat of government at Sitka. A governor was provided, charged with the interests of the United States arising in the district, with authority to see that the laws are enforced, to whom was given power to grant reprieves pending the action of the President. A district court was established, with civil and criminal jurisdiction of district courts of the United States, and such other jurisdiction as might be established by law. Two terms of court each year were provided and the judge was given authority to make allowances for the necessary expenses of his court. Four commissioners were provided with the civil and criminal jurisdiction of justices of the peace in Oregon, also with testamentary and probate jurisdiction, and with authority to grant writs of habeas corpus returnable before the judge. Fines and forfeitures received by them were to be paid over to the clerk of the district court. A marshal was provided, with authority to appoint four deputies with not only the duties of deputy United States marshals, but those of constables under the laws of Oregon.

The general laws of Oregon were made the law of the district so far as applicable. Writs of error in

criminal cases were to issue from the United States circuit court for Oregon.

The provision of this act to which special attention should be directed is that contained in section 4, which provided:

> That a clerk shall be appointed for said court *who shall be ex officio secretary and treasurer of said district.* * * * The clerk shall record and preserve copies of all the laws, proceedings, and official acts applicable to said district. *He shall also receive all moneys collected from fines, forfeitures, or in any other manner* except from violations of the customs laws, *and shall apply the same to the incidental expenses of the said district court and the allowances thereof, as directed by the judge of said court,* and shall account for the same in detail, and for any balances on account thereof, quarterly, to and under the direction of the Secretary of the Treasury.

Thus the clerk was made the treasurer of Alaska. All moneys collected there were to be turned over to him, and he was given authority to apply them to the incidental expenses of the court—the court which, it is to be observed, provided, with its officers, practically all the machinery of government in force in Alaska.

While it is true that under the provisions of the act of May 14, 1898 (30 Stat. L., 409), the homestead laws were extended to Alaska and provisions made for the granting of rights of way for railroads, wagon roads, and tramways, as well as for the purchase of land and

timber upon certain conditions, the machinery of government provided by the act of 1884 remained in force at the time of the passage of the act of March 3, 1899 (30 Stat. L., 1253), "To define and punish crimes in the district of Alaska and to provide a code of criminal procedure for said district." Alaska had no Territorial form of government, no legislature of its own, no treasury of its own, no revenue of its own, no appropriations of its own. Practically it was governed by the court; its only treasurer was the clerk of the court; its only local revenues the moneys paid to the clerk as treasurer; and substantially its only appropriations the authority on the part of the clerk to pay out of these receipts the incidental expenses of the court.

Attention is particularly directed to the fact that the local expenses of Alaska, expenses provided for in organized Territories by local taxation, were neither borne by Alaska itself or specially appropriated for by Congress, but were met by the different departments of the Government through the use of general appropriations expended by agents located in Alaska.

In 1897 and 1898 the great rush to Alaska and the Klondike began. Adventurous men from all parts of this country and of the world hurried there. Not simply the hardy and daring, but the reckless and lawless were attracted. The law prohibiting the importation and use of liquor became a dead letter. Many occupations were used for purposes of fraud and extortion. There was a pressing need of regulation and supervision. Legislation was imperatively demanded.

As a result, the formulation of not only a criminal but a civil code was begun.[a]

POINTS AND AUTHORITIES.

I.

The power to impose these license fees is not derived from the general power of taxation provided for in Article I, section 8, of the Constitution, but from the plenary power "to dispose of and to make all needful rules and regulations respecting the territory or other property belonging to the United States." (Art. IV, sec. 3, par. 2.) The exercise of such power is therefore not subject to the provisions limiting the general power of taxation as to apportionment and uniformity.

In considering the constitutionality of the law here under discussion it is manifestly unnecessary to ascertain or attempt to define the precise political relations existing between the Territory of Alaska and the Federal Government. That Alaska is territory belonging

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[a] Men came from Maine, Texas, Minnesota, and Dakota, and from all the mining regions of the Rocky Mountains. Some had well-matured ideas and plans, and were going with the intention to prospect and mine. Some were of the sporting class and intended to gamble and get through on their wits. The fever was in the air and the blood. It was, as Petrucio says:

> "Such wind as scatters young men through the world,
> To seek their fortunes farther than at home,
> Where small experience grows."

Large outlays were made for gambling furniture, theatrical outfits, liquors of all kinds, tobacco in every variety. Variety performers, indifferent, bad, and very bad, were in evidence. Prostitutes under various guises and under no guise at all joined the rush. * * * This stampede to Nome is unique. There is nothing in the history of the country like it. The arrivals on the ocean vessels to July 15 were 18,000 souls. One hundred and sixty-two steamships and 70 sailing vessels arrived up to August 1. (Report of governor of Alaska, 1900.)

See also History of Alaska, Bancroft. Reports of the governors of Alaska, 1901, 1902, and 1903.

to the United States is settled beyond controversy, and that Congress has plenary powers, national and municipal, federal and state, over all the Territories, so long as they remain in a Territorial condition, has been decided in numerous opinions of this court.

American Insurance Co. v. *Canter*, 1 Pet., 511, 542;
Benner v. *Porter*, 9 How., 235, 242;
Cross v. *Harrison*, 16 How., 164, 193;
National Bank v. *Yankton County*, 101 U. S., 129, 133;
Murphy v. *Ramsey*, 114 U. S., 15, 44;
Mormon Church v. *United States*, 136 U. S., 1, 42, 43;
McAlister v. *United States*, 141 U. S., 174, 181;
Shively v. *Bowlby*, 152 U. S., 1, 48;
Downes v. *Bidwell*, 182 U. S., 244;
Hawaii v. *Mankichi*, 190 U. S., 197.

If Congress, therefore, has plenary power to make all needful rules and regulations for the government of the Territory of Alaska, we have only to inquire as to whether the particular law here under discussion was enacted by Congress as a needful regulation for the government of that Territory, and in support of this contention I submit the three following propositions:

1. The license fees imposed by this law are a part of a penal code, and in the nature of police regulations, which, in the judgment of Congress, are necessary for the government of the Territory of Alaska by reason of its social conditions.

Inasmuch as Congress, when enacting laws for the government of the Territories, is invested with all

powers, both national and municipal, federal and state, it must necessarily follow that Congress has the power to pass laws in the nature of police regulations. We will, therefore, first consider this law as a police regulation, without regard to the revenue which must necessarily accrue from its enforcement.

Neither the title nor the body of the act nor the particular provisions under consideration suggest the ordinary taxing statute. The act (31 Stat., 1253) is entitled: "An act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for said district."

Its first section constitutes a political subdivision which it calls the "district of Alaska." Then follows an elaborate penal code for the government of its inhabitants, and as an incident to such penal code the paragraph now under consideration was inserted, requiring any person, corporation, or company to obtain a license before prosecuting, or attempting to prosecute, any of the occupations referred to in said paragraph. It is significant, moreover, that the collection of these fees is not left to the collector of customs or of internal revenue, as ordinary excise taxes always are, but are payable to and collected by the clerks of the Alaskan courts.

When regard is had to the peculiar social conditions in Alaska, it is clear that these provisions are intended primarily for the purposes of police regulation, and that the revenue to be derived therefrom is only incidental in nature. The small population of whites had been suddenly increased by the discoveries of gold in

the Klondike, and, as in the case of California, an extraordinary rush of adventurers and fortune hunters from all parts of the world had followed.

It is obvious that with such an invasion of men who, in many instances, were irresponsible adventurers, it was necessary that there should be some governmental supervision of those who should embark in business, and Congress deemed it wise to vest such supervision in the judicial department of the Government by providing, in section 463, that every person, corporation, or company which intended to embark in business, of the kinds mentioned in the act, should apply to the court for a license, and that the granting of this license should be the subject of recommendations or remonstrances by the citizens of Alaska; and that the court, having due regard to such recommendations or remonstrances, should grant or refuse the license in question. This is obviously a police regulation, and differs wholly from the ordinary licenses of the United States internal revenue, which, as stated in the License Cases (5 Wallace, 462), are not licenses in the proper sense of the term, but simply the method of collecting the annual tax. *In Alaska, however, the supervision of the business through a license is the primary purpose of the act, and revenue is but an incident,* whereas with the ordinary liquor licenses under the internal-revenue system revenue is the primary purpose and the license an incident to it.

In the case of *Wiggins Ferry Company* v. *East St. Louis* (107 U. S., 365) a license fee imposed by the State of Illinois upon a domestic corporation for the

privilege of running a ferry between a point in that State and a point in Missouri was under consideration. As to the nature of such a license fee this court said:

> The power to license is a police power, although it may also be exercised for the purposes of raising revenue. We can not say, as a matter of law, that when a municipal corporation is authorized "to regulate, tax, and license ferryboats" the imposition of a license fee of $100 per boat is not within the power to regulate and license, and is consequently not within the police power.

Again, page 375, the court say:

> The power of the State of Illinois to authorize any city within her limits to impose a license tax on trades or callings generally, especially those which are quasi public, can not be disputed. Draymen may be compelled to pay a license tax on every dray owned by them, hackmen on every hack, tavern keepers on their taverns in proportion to the number of rooms which they keep for the accommodation of guests. We do not think that the Constitution of the United States, by the section which prohibits a State from laying a duty of tonnage, protects the keeper of a ferry from a similar tax upon the boats which he employs. Whether a license fee is exacted under the power to regulate or the power to tax is a matter of indifference if the power to do either exists. The license fee exacted is, in effect, laid upon the business of keeping a ferry; for it is not laid

> upon all boats owned by the ferry keeper, but only on those plying between the two banks of the river, and is graduated by the number of boats used by him.

It is true that in this case the constitutionality of a state statute was under consideration, but in legislating for Alaska, Congress has all the powers both of the Federal Government with respect to the States and of the State governments with respect to their domestic concerns. See also *Ficklen* v. *Shelby County*, 145 U. S., 1, 23, and *Munn* v. *Illinois*, 94 U. S., 113.

The licensing of persons to sell liquor is not an exercise of the taxing power of the State to raise revenue, but of the police power for the regulation and restriction of a dangerous business; it follows that the adjustment of fees for the license is not governed by the constitutional provisions requiring equality and uniformity of taxation. Black on Intoxicating Liquors; *Thomason* v. *State*, 15 Ind., 449. See also Black on Intoxicating Liquors, sec. 108, and cases there cited; also sections 109 and 179; *Lovingston* v. *Board of Trustees*, 99 Ill., 564.

In *Thomasson* v. *State* (*supra*) a license fee of $50 had been imposed by an act of the legislature of Indiana as the consideration for the privilege of selling liquor. It was held to be void under a provision of the constitution of Indiana which provides that taxation shall be uniform. The court held otherwise, saying:

> It is claimed that the fee for license, $50, is a tax upon a particular pursuit, and as such is

prohibited by section 1 of Article X of our constitution, providing for a uniform rate of taxation. But it has been decided that that section relates to the general levy alone. (*The Bank* v. *The City of New Albany, supra; Anderson* v. *The Kerns Draining Company*, 14 Ind., 199.) See, as to unlimited taxing power, Ind. Dig., sec. 16, p. 761. The license upon retailing is an excise. (1 Story on the Const., p. 670.)

An excise is an indirect tax; but in this case taxation was not the object of imposing it, and the legislature was not bound to appropriate its proceeds to any object for which the State is forbidden to raise money by local or special taxation. It was imposed in the exercise of the rightful police power of the State, and is an incident of a legitimate police regulation. Hence, it is not within the prohibition of the twenty-second section of the fourth article of the constitution, prohibiting local and special taxation for State purposes. (See 7 How., 283; 2 Story on the Constitution, p. 10 et seq.)

In *Lovingston* v. *Board of Trustees* (99 Ill., 564) a similar license fee for the sale of liquors was held not to be a tax within the constitutional provision of the State of Illinois requiring equality and uniformity. The court says:

> But it is next urged that these license fees are a tax, and they are illegal because they are not uniform. We have been unable to find anything from which it may be inferred that the fees received from dramshop licenses by the city were not uniform in amount and the period

for which they were to run. This would seem to be a complete answer to that position.

In the cases of *The People* v. *Thurber* (13 Ill., 554) and *East St. Louis* v. *Wehrung* (46 id., 392) it was held that a fee received for a license granted by a municipal corporation, authorizing the sale of liquor, was not a tax, in a constitutional sense, and not being a tax in that sense it did not violate the constitutional requirement of equality in the levy of taxes.

The power exercised in providing this system of police supervision is, therefore, not the general taxing power under Article I, section 8, but is referable to the distinct power under Article IV, section 3, of providing "needful rules and regulations respecting the territory or other property belonging to the United States." It is, therefore, unrestricted as to uniformity.

The Constitution requires uniformity of taxation, but does not require uniformity of police supervision. The power of Congress to adapt its police regulations, or, to use the term of the framers of the Constitution, its "needful regulations," to the peculiar conditions and needs of each separate territory seems clear. The framers wisely avoided any attempt to create uniformity where uniformity was impossible.

If, therefore, this paragraph 460 can be clearly held to be, in common with the other provisions of this act, a needful regulation of a police character rather than a revenue statute, even though as a mere incident to such police regulation license fees are exacted, then it is constitutional, and, to use the words of Mr. Justice White

(*Downes* v. *Bidwell*, 182 U. S., 292), it "is not to be measured by the provision empowering Congress 'to lay and collect taxes, duties, imposts, and excises,' and is not restrained by the requirement of uniformity throughout the United States."

It is true that Mr. Justice White had reference in these words to a levy of "local taxes for local purposes within the territories," but the underlying principle to which I understand him to give utterance is that if a given exercise of legislative power is referable and justified by the power to make needful regulations, even though it incidently has the characteristics of taxation, it is not subject to a restriction imposed upon the *general* powers of taxation. The two powers are independent, and if the present provision be a "needful regulation" it is justified without respect to the taxing clause of the Constitution.

Congress has the power to license various trades and occupations in the Territories independently of and apart from the power to tax, and the mere fact that revenue is derived as an incident to the exercise of such power will not operate to characterize the license fee as a tax.

(a) THE LICENSE-TAX CASES.

The distinction between a license which grants authority to engage in a particular business, and thus confers a privilege, and a tax which grants no such authority, and therefore confers no privilege, was clearly drawn in the *License-Tax Cases* (5 Wall., 462), wherein the court held that the so-called license tax imposed by the United States upon the liquor business

did not provide a license, but merely a tax collected in the form of a license. The court pointed out that the license issued by the General Government conferred no authority to engage in the liquor business in the several States, because Congress had no power to regulate occupations carried on within the States. The court, speaking by Chief Justice Chase, said (p. 470):

> It is not doubted that where Congress possesses constitutional power to regulate trade or intercourse it may regulate by means of licenses as well as in other modes; and, in case of such regulation, a license will give to the licensee authority to do whatever is authorized by its terms.
>
> Thus Congress, having power to regulate commerce with foreign nations and among the several States and with the Indian tribes, may, without doubt, provide for granting coasting licenses, licenses to pilots, licenses to trade with the Indians, and any other license necessary or proper for the exercise of that great and extensive power; and the same observation is applicable to every other power of Congress to the exercise of which the granting of licenses may be incident. All such licenses confer authority, and give rights to the licensee.
>
> But very different considerations apply to the internal commerce or domestic trade of the States. Over this commerce and trade Congress has no power of regulation nor any direct control. This power belongs exclusively to the States. No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution except such as is

> strictly incidental to the exercise of powers clearly granted to the legislature. The power to authorize a business within a State is plainly repugnant to the exclusive power of the State over the same subject.

The court therefore reached the following conclusion (p. 471):

> But it is not necessary to regard these laws as giving such authority. So far as they relate to trade within State limits they give none, and can give none. * * * The granting of a license, therefore, must be regarded as nothing more than a mere form of imposing a tax, and of implying nothing except that the licensee shall be subject to no penalties under national law if he pays it.

(b) THE REVENUE FEATURE.

Passing to the revenue feature, it is asserted that so much money is raised that the measure must be regarded as one for revenue only. In this connection let me refer to what the supreme court of Ohio said in two leading cases on the subject of license taxes. In each of these cases the license tax was assailed on the ground that it violated the uniformity clause of the Constitution, in that it was a tax for general revenue and was not uniform. Respecting the power and policy of licensing certain occupations, Judge Gholson, in the case of *Baker* v. *Cincinnati* (11 Ohio St., 534), said (p. 543):

> We think that the power to prohibit certain things to be done, unless a license be obtained, and to charge for such license, in many instances of its exercise, stands on the same principle as

an assessment. An assessment stands on a principle of benefit to property; a charge for a license may be made in view of the special inconvenience and expense to the government, for the benefit of the individual who asks for the license. Things licensed may be such as should only be permitted under the regulation or supervision of public functionaries. The tax or charge may have reference to such regulation and supervision * * * *To say that it is a tax and goes into the public treasury does not disprove this object.*

And in *Marmet* v. *State* (45 Ohio St., 63) Judge Spear said (p. 70):

> *Whether the authority to enact laws of the character of the one in question shall be regarded as based upon the police power of the Government, or upon the taxing power is, perhaps, not of the greatest importance, provided the power is found to exist. We have the best of authority for the oft-repeated aphorism "there is no magic in names."* The enactment provides for the regulation of relative rights, privileges, and duties as between individuals, for the conservation of order and the discouragement of pernicious employments, or of such as may become so, thus keeping its object apparently within the attributes of police power (Cooley on Taxation, 586); but we need not concern ourselves with nice and finely drawn distinctions. Both the police and the taxing power, including power of assessment, are included within the general legislative power vested by our constitution in the general assembly.

(e) CONGRESS COULD NOT MAKE THESE LICENSES UNIFORM THROUGHOUT THE UNITED STATES.

These are clearly licenses, and therefore clearly local. In granting them the court must consider local conditions, and grant or refuse in view of such conditions. Now, the objection on the other side is that these license taxes are not uniform throughout the United States. But how could Congress make such local regulations uniform throughout the United States? How could Congress provide that all these occupations should also be licensed throughout the United States, in all the States? It would not only be impracticable, but clearly violative of the Constitution. Such occupations can be regulated and licensed within the States only by the States themselves.

2. If taxes at all, these license fees are local taxes imposed by Congress as the legislature of Alaska, and paid into the Treasury of the United States as the only treasury of Alaska, and obviously intended to meet the expenses of governing that Territory.

Even though these license fees are held to be taxes within the strict sense of that term, yet they are local taxes and are, therefore, not a tax within the meaning of Article I, section 8, for, as Mr. Justice White said in *Downes* v. *Bidwell* (182 U. S., 292):

> *As Congress derives its authority to levy local taxes for local purposes within the Territories, not from the general grant of power to tax as expressed in the Constitution, it follows that its right to locally tax is not to be measured by the provision empow-*

ering Congress "To lay and collect taxes, duties, imposts, and excises," and is not restrained by the requirement of uniformity throughout the United States.

As was said in *Gibbons* v. *District of Columbia* (116 U. S., 404):

> The power of Congress, legislating as a local legislature for the District (Columbia), to levy taxes for District purpose only, in like manner as the legislature of a State may tax the people of a State for State purposes, was expressly admitted, and has never since been doubted. (5 Wheat., 318; *Welch* v. *Cook*, 97 U. S., 541; *Mattingly* v. *District of Columbia*, id., 687.) In the exercise of this power Congress, like any State legislature unrestricted by constitutional provisions, may at its discretion wholly exemp certain classes of property from taxation, or may tax them at a lower rate than other property.

If, therefore, a reasonable interpretation of the legislation in question will make the tax in question local in character, that construction will be favored and adopted and the act sustained. To construe these license fees as local taxation (if taxation at all) seems to me reasonable, when it is remembered the conditions for which Congress was legislating.

As has been said, the only legislative body in Alaska is Congress, and similarly the only executive in Alaska is the national executive acting through its local appointees. *Alaska has no distinct treasury and no officer known as treasurer.* As the Congress sitting at Washington is the legislature, so the Treasury Department,

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located in Washington, is the treasury of Alaska, and Congress presumably knew this when it passed the act of 1899. As will appear from the tables hereto appended,[a] Congress has for many years spent large sums of money in Alaska for the benefit of its inhabitants, for which it has received no adequate return in the form of taxes, and the appropriations for Alaska have always exceeded the revenue derived from its people. Prior to the act of 1899 the people of Alaska, although provided with an inchoate form of government distinct from the National Government, made no return therefor in the shape of taxation. In common with the other inhabitants of the States and Territories, they paid the ordinary internal revenue and tariff duties, for which they shared those privileges of the General Government which are common to all the citizens of the Republic, but for the local government which was established for their immediate benefit they made no direct return in the shape of local taxation, and this notwithstanding that Congress was expending large sums of money in policing the district, establishing courts, protecting its industries, and otherwise promoting the welfare of its inhabitants. Assuming, therefore, that the license fees in question had any other purpose beyond the "needful regulation" of the occupations in Alaska, it is obvious that they were intended to meet the expenses of administering the act for the local government of Alaska, of which act the license

[a] See Appendix C.

fees are a part. It may be said, however, that Congress did not in words restrict the expenditure of the taxes thus collected to local purposes, but for this there were two reasons. In the first place, there was no separate treasury of Alaska into which the license fees could be paid; and in the second place, Congress may well have assumed from the facts within its possession that as the appropriations for Alaska were in excess of any possible receipts from these license fees, that the moneys thus raised were in fact expended locally within the Territory, for the Government was thus recouping itself for a great drain upon the general funds. If so spent in fact, is it important whether the fund was especially earmarked, especially when the only treasury into which the taxes could be paid and held was the general Treasury of the United States? Such construction is strengthened when it is remembered that by the legislation of the subsequent year one-half of said local fees were expressly appropriated for school purposes within the district. There being no local treasury in Alaska, Congress could have done no more, except to expressly provide that all of these license fees should be appropriated for and spent in Alaska, but if such an intent may be fairly gathered from the act as a whole, will not the court favor the construction which saves the constitutionality of the legislation in question? This view is further supported by the fact that these license fees are imposed as a part of a penal code and are obviously intended to meet the expenses of its administration.

Whatever be the theory, the fact is (as appears from Exhibit C) that all of the moneys that have been raised by these license fees, or by any other means in Alaska, have been expended by the United States in that district for the benefit of its people.

Had Congress regarded these taxes as general excise taxes it would presumably have left the collection of the inland excises to the internal-revenue department, which collects other internal-revenue duties, and the shipping duties to the collector of customs. On the contrary, the act expressly provides that the clerk of the court shall receive the money and pay the same into the general Treasury. It is therefore obvious that these license fees were not regarded as internal-revenue duties or as a part of the general revenues of the Government. In imposing upon the clerks of the district courts the duty of their collection, their distinctive and local character as a fund apart from the general revenues of the Government is emphasized.

If the court will favor any reasonable construction that will sustain the constitutionality of the legislation, then I submit it should favor a construction of the act of Congress now under consideration which interprets its true meaning to be that the license fees imposed by said act are levied and collected for the benefit of the people of Alaska and to be expended therein. If Alaska had a local treasury this construction would not be so apparent; but I submit that where there is no local treasury, the mere fact that local taxes are paid into the general Treasury of the United States

(that being the only treasury of Alaska) does not rebut the fair presumption under our constitutional system that local taxes are intended for local purposes only, and that reasonable presumption is strengthened by the fact that Congress presumably knew that the appropriations for the local government in Alaska exceeded and would exceed the amount raised from local and general taxation in this unorganized territory.

DIVERSION OF LICENSE FEES TO SCHOOL PURPOSES.

And at this point it may be well to call attention to the fact that in the civil code, enacted in 1900, under the chapter providing for the incorporation of certain towns, it was enacted that 50 per cent of the moneys collected from licenses in such towns should be turned over to the town treasurer for use for school purposes (31 Stat. L., 521). And the next year, 1901, this section was amended so as to provide that if the 50 per cent of the license fees were not needed for school purposes in the municipality the balance might be expended for general municipal purposes (31 Stat. L., 1438). And in this amendment there was included a further provision that 50 per cent of all license fees collected outside of incorporated towns should be turned into the Treasury of the United States and placed at the disposal of the Secretary of the Interior for use for school purposes in Alaska outside of incorporated towns.

By the amendment of March 2, 1903 (32 Stat., 946), *all* of the license fees received for business carried on within incorporated towns shall be paid over to the

corporation for school and municipal purposes; and 50 per cent of the amount received outside of incorporated towns to be deposited in the Treasury to be expended under the direction of the Secretary of the Interior for school purposes outside of incorporated towns.

3. Admitting, for the purpose of the argument, that these license fees are local taxes imposed by Congress in the Territory of Alaska and appropriated by Congress to the support of the General Government, we assert that such a law would be constitutional under the plenary power of Congress to govern the Territories.

While, as has already been shown, there can be no question but that the license fees collected under this act of Congress if taxes at all are local taxes devoted by Congress for local purposes, the point is made that, because the moneys are covered into the Treasury of the United States, from which it follows that Congress might appropriate such moneys for general purposes, necessarily operates to make the law unconstitutional. If Congress has the power to tax the Territories without reference to the general taxing power contained in Article I, section 8, of the Constitution, it is difficult to perceive in what manner such power is restricted to a tax levied by Congress in Territories *for local purposes only.* Certainly there is no express provision of the Constitution which prohibits Congress, when taxing under the territorial clause, from covering into the Treasury of the United States the proceeds derived from such local tax, and subsequently appropriating such moneys for general

governmental purposes. The Territories, as we have heretofore shown, are unquestionably property belonging to the United States. Congress has the power either to dispose of such territory or to make needful rules and regulations for its proper government, and if such regulations include the power to tax which results in revenue to the General Government, where is to be found the constitutional restriction upon the power of Congress to cover such revenue into the General treasury, and to appropriate the same for the payment of the debts of the General Government? Congress under the general taxing clause of the Constitution has the power to levy taxes uniform throughout the United States, and to apply the proceeds for the benefit of any Territory belonging to the United States, and it has never been considered that the use of the money so collected from the people of all the States, and appropriated for the benefit of a particular Territory, is in any way violative of the rights of the people residing in the States from which such money was collected. Why should the reverse of the proposition be regarded as unconstitutional? The people of all the States spend their money, under the direction of Congress, for the benefit of a particular Territory, and there is no express provision in the Constitution requiring Congress when taxing in a Territory to appropriate the money so collected for the sole and exclusive benefit of such Territory. Nor, in my judgment, does the Constitution contain by necessary implication such a restriction upon the power of Congress to tax in the Territories.

So far as we have been able to ascertain, Congress has never attempted to tax the Territories under the Territorial clause of the Constitution *except for local purposes*, which fact, possibly, has given rise to the idea that Congress, in levying local taxes in the Territories, is restricted to taxing for local purposes, but it is difficult to appreciate the logic which would sustain a tax as constitutional if assessed and collected by Congress for local purposes, but which tax having been collected would become unconstitutional if devoted by Congress subsequently to the payment of the public debts of the United States. We therefore contend that even admitting arguendo, that these license fees are local taxes laid and collected for the support of the General Government; that the law which authorizes their assessment and collection for such purposes is a constitutional exercise of the taxing power of Congress under the Territorial clause of that instrument.

Mr. Justice White, in his concurring opinion in *Downes* v. *Biddle* (182 U. S., 244, 299), said:

> The sole and only issue, then, is not whether Congress has taxed Porto Rico without representation—*for, whether the tax was local or national, it could have been imposed, although Porto Rico had no representative local government and was not represented in Congress*—but is whether the particular tax in question was levied in such form as to cause it to be repugnant to the Constitution. This is to be resolved by answering the inquiry, Had Porto Rico, at the time of the passage of the act in question, been incorporated into and become an integral part of the United States?

II.

Section 418 of the Code of Criminal Procedure of Alaska, permitting the defendant to waive a jury trial in the prosecution of all offenses triable in a justice court, is constitutional.[a]

While this question is not raised by the assignments of error, in view of the fact that this court, of its own motion, as I am informed, in the so-called oleomargarine cases, argued and submitted at this term of the court, inquired into the power of a Federal court to permit a defendant to waive a jury trial and have the issue tried by the court, we have deemed it appropriate to refer briefly to certain principles of law which clearly distinguish this prosecution from prosecutions conducted under the Federal laws within the States.

We have heretofore demonstrated that Congress in legislating for Alaska is invested with plenary powers, including the power to enact police regulations analogous to, if not identical with, those ordinances and by-laws which a municipality may pass for the regulation of the various trades and callings carried on within its boundaries. And whatever may be said with reference to the nature of other offenses cognizable before justices of the peace in the Territory of Alaska under the code of criminal procedure, it is manifest that the license fees imposed by section 460 of that act are in the nature of municipal by-laws. Section 461 authorizes the justice before whom the trial is had, upon conviction, to fine the offender in a sum equal to the

[a] See Appendix A for the various provisions of the Alaska Code of Criminal Procedure relating to waiver of a jury trial before justices of the peace in criminal cases.

license required for the business, trade, or occupation, and for the second offense a fine equal to double the amount of the license so required, while for the third offense the court may impose a fine in three times the amount of the license so required and imprison the offender for a period of not less than thirty days nor more than six months.

It will be observed that so far as appears from this record the defendant was convicted for "*a first offense*," and the court therefore, under the law, only had power to impose a fine in the sum of $50. It will, therefore, be unnecessary to go into the question as to whether that portion of the law which authorizes the court upon a third conviction to *fine and imprison* removes such a case from that *class of petty offenses*, which at the time of the adoption of the Constitution were both in this country and in England generally triable in a summary manner by the court without a jury. In other words, the Government contends that this prosecution belongs to that class of petty or minor offenses not usually embraced in public criminal statutes, and not of the class or grade triable at common law by a jury.

And, in support of this contention, we submit the following authorities for the consideration of this court:

Callan v. Wilson, 127 U. S., 540.

In this case Mr. Justice Harlan, in delivering the opinion of the court, after pointing out that the third article of the Constitution embraces not only felonies, but some classes of misdemeanors the punishment of

which involves, or may involve, the deprivation of the liberty of the citizen, said (p. 555):

> Without further reference to the authorities, *and conceding that there is a class of petty or minor offenses not usually embraced in public criminal statutes, and not of the class or grade triable by common law by jury, and which, if committed in this district, may, under the authority of Congress, be tried by the court and without a jury*, we are of opinion that the offense with which the appellant is charged does not belong to that class. A conspiracy such as is charged against him and his codefendants is by no means a petty or trivial offense.

And again (p. 557):

> *Except in that class or grade of offenses called petty offenses, which, according to the common law, may be proceeded against summarily in any tribunal legally constituted for that purpose*, the guaranty of an impartial jury to the accused in a criminal prosecution, conducted either in the name or by the authority of the United States, secures to him the right to enjoy that mode of trial from the first moment and in whatever court he is put on trial for the offense charged.

Hallinger v. Davis (146 U. S., 314).

Mr. Justice Shiras, in delivering the opinion of the court, said (p. 318):

> Upon the question of the right of one charged with crimes to waive a trial by jury, and elect to be tried by the court, *when there is a positive legislative enactment giving the right so to do and conferring power on the court to try the accused*

in such a case, there are numerous decisions by State courts upholding the validity of such proceeding. (*Dailey* v. *The State*, 4 Ohio St., 57; *Dillingham* v. *The State*, 5 Ohio St., 280; *People* v. *Noll*, 20 California, 164; *State* v. *Worden*, 46 Connecticut, 349; *State* v. *Albee*, 61 N. H., 423, 428.)

Thompson v. Utah, 170 U. S., 343.

The court, speaking through Mr. Justice Harlan, said (p. 353):

> It is said that the accused did not object, until after the verdict, to a trial jury composed of eight persons, and therefore he should not be heard to say that his trial by such a jury was in violation of his constitutional rights. *It is sufficient to say that it was not in the power of one accused of felony*, by consent expressly given or by his silence, to authorize a jury of only eight persons to pass upon the questions of his guilt. The law in force when this crime was committed did not permit any tribunal to deprive him of his liberty, except one constituted of a court and a jury of twelve persons.

A trial by jury at the time of the adoption of the Constitution could even *be denied* to one charged with a violation of municipal ordinances. The Government contends that in the case at bar the defendant was convicted for a violation of a law enacted by Congress under its power to make laws for the government of Alaska in the nature of municipal by-laws or regulations.

City of Mankato v. Arnold, 36 Minn., 62.

The defendant in this case was arrested and brought before the municipal court of the city of Mankato, upon a charge of violating the ordinances of that city by the sale of intoxicating liquor in a less quantity than 5 gallons. The defendant demanded a jury trial, which was refused. The case was thereupon tried by the court, and the defendant was found guilty, and appealed from the judgment. The court said:

> The provisions of the Constitution which relate to the subject are article I, section 4, which is intended to preserve and continue the right of trial by jury as already existing when the Constitution was adopted, and section 6, which guarantees the right of trial by jury in all "criminal prosecutions." As respects prosecutions for offenses against the municipal authority simply, the provisions of the act referred to violate neither of these sections. *Before the adoption of the Constitution, and generally in this country and in England, except where otherwise expressly ordained by legislative enactment or constitutional provisions, the prevalent practice and rule was to dispense with jury trials in municipal prosecutions for the violation of ordinances. Byers* v. *Com.*, 42 Pa. St., 89; 1 Dill. Mun. Corp. (3d ed.), sec. 428 (358); Proffatt on Trial by Jury, sec. 84.

And again (p. 65):

> *Prosecutions for offenses against municipal by-laws, which in cities, from the number and nature of such cases, must necessarily be summary to be effective, are on the same footing with prosecutions for*

petty offenses, which in some jurisdictions are summarily tried, and a jury held not to be required, even though the penalty be a limited imprisonment. (*People* w. *Justices*, etc., 74 N. Y., 406.) In respect to the matter last suggested, Mr. Dillon says (1 Mun. Corp.), No. 427 (357), that such penalty does not necessarily make the case one to which the right to a jury trial extends. The question depends rather upon the intrinsic nature of the offense.

State w. *West*, 42 Minn., 147.
State w. *Harris*, 50 Minn., 128.
State w. *Woodling*, 53 Minn., 142.

See also

State w. *Kaufman*, 51 Iowa, 578.
State w. *Dailey*, 12 Cush., 80.
United States v. *Taylor*, 11 Fed., 470.
United States v. *Shaw*, 59 Fed., 110.

Defendant in fact confessed his guilt.

The defendant in the case at bar, in addition to an express waiver of his right to a trial by jury, admitted in open court every material fact alleged in the complaint. There was, therefore, no issue of fact to be tried by a jury, the only question being one of law, as to whether the statute was constitutional. The court having decided this question of law adversely to the contention of the defendant, and the facts alleged in the complaint being admitted, nothing remained for the court to do except to adjudge the defendant guilty of the offense charged, and pass sentence.

Section 97 of the Code of Criminal Procedure of Alaska provides (30 Stat., p. 1295):

> That if the demurrer be disallowed, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow; *but if he do not plead, judgment must be given against him.*

It will thus be observed that under the law the defendant had the opportunity to plead *not guilty* after his demurrer had been overruled, but he still persisted *in admitting the facts alleged in the complaint*, which was tantamount to a *confession of guilt.*

In the case of *Hallinger* v. *Davis* (*supra*) this court said (p. 318):

> *If a recorded confession of every material averment of an indictment puts the confessor upon the country, the institution of jury trial and the legal effect and nature of a plea of guilty have been very imperfectly understood, not only by the authors of the Constitution and their successors down to the present time, but also by all the generations of men who have lived under the common law.* It is only necessary, in order to determine whether the legislature transcended its power in the act, to inquire whether it is prohibited by the Constitution. The right of the accused to a trial was not affected, and we can, therefore, have no doubt that the proceeding to ascertain the degree of the crime where, in an indictment for murder, the defendant enters a plea of guilty, is constitutional and valid. Statutes of like or similar import have been enacted in many of

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the States, and have never been held unconstitutional. On the other hand, they have been repeatedly and uniformly held to be constitutional.

See *State* v. *Almy* (67 N. H., 274), and cases cited.

So in the case at bar, the statute above quoted in effect provides that if the defendant, after having interposed a demurrer which is overruled, *elects to stand upon his admission of the facts charged in the complaint, that such action on his part shall constitute and be equivalent to a "plea of guilty" which will authorize the court to impose a sentence* which will be as valid and effectual as though the defendant entered a *formal plea of guilty.*

IN CONCLUSION.

It will be observed that in our discussion of the constitutional question here presented we have freely disclaimed any intention of attempting to sustain the law here under consideration as being authorized under the general taxing clause of the Constitution. If, however, the Territory of Alaska has never been incorporated into the United States so as to become an integral part thereof, the power of Congress to tax in that Territory for general purposes under the general taxing clause of the Constitution, unrestricted by the limitations contained in that instrument as to apportionment and uniformity, might well be urged upon the consideration of this court upon the theory that the general taxing power of Congress reaches every place subject to its jurisdiction, while the limitations as to apportionment

and uniformity are applicable as a restriction upon such power only within such territory as has been either expressly or impliedly incorporated into the United States. And while it must be conceded that four of the concurring justices in *Downes* v. *Bidwell* (*supra*) expressed it as their opinion that Alaska has been incorporated into and has become a part of the United States, it will, I think, be conceded that the precise political status of Alaska was a question the determination of which was not necessarily involved in the decision of that case. Nor is that question necessarily presented for determination in the case at bar, and therefore may well be left for consideration in some case necessarily involving its examination.

We have taken the liberty of referring to this point thus briefly, in conclusion, in order that we may not be understood as conceding that Congress may not tax in the Territory of Alaska for general purposes unrestricted by those constitutional limitations as to apportionment and uniformity which, in our judgment, would be inapplicable to that Territory if it has never been incorporated into and become an integral part of the United States.

Respectfully submitted.

MILTON D. PURDY,
Assistant Attorney-General.

APPENDIX A.

VARIOUS PROVISIONS OF THE ALASKA CODE OF CRIMINAL PROCEDURE APPLICABLE TO THE CASE AT BAR.

1. Sections of the Criminal Code referring to license fees.

Section 460, of the act of March 3, 1899, as amended by the act of June 6, 1900, (31 Stat. 330):

SEC. 29. An act entitled "An act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for the district," approved March third, eighteen hundred and ninety-nine, be, and is, amended, by adding to section three hundred and sixty-three thereof the following: "*Provided*, Section fifteen of an act entitled 'An act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes,' approved June eighteenth, eighteen hundred and seventy-eight, shall not be construed to apply to the district of Alaska:" *Provided further*, That section four hundred and sixty, chapter forty-four, title two, of said first-mentioned act, be amended to read as follows:

"SEC. 460. That any person or persons, corporation, or company prosecuting or attempting to prosecute any of the following lines of business within the district of Alaska shall first apply for and obtain license so to do from a district court or a subdivision thereof in said district, and pay for said license for the respective lines of business and trade as follows, to wit:

"Abstract offices, fifty dollars per annum.

"Banks, two hundred and fifty dollars per annum.

"Boarding houses having accommodations for ten or more guests, fifteen dollars per annum.

"Brokers (money, bill, note, and stock), one hundred dollars per annum.

"Billiard rooms, fifteen dollars per table per annum.

"Bowling alleys, fifteen dollars per annum.

"Breweries, five hundred dollars per annum.

"Bottling works, two hundred dollars per annum.

"Cigar manufacturers, twenty-five dollars per annum.

"Cigar stores or stands, fifteen dollars per annum.

"Drug stores, fifty dollars per annum.

"Public docks, wharves, and warehouses, ten cents per ton on freight handled or stored.

"Electric-light plants, furnishing light or power for sale, three hundred dollars per annum.

"Fisheries: Salmon canneries, four cents per case; salmon salteries, ten cents per barrel; fish-oil works, ten cents per barrel; fertilizer works, twenty cents per ton.

"Freight and passenger transportation lines, propelled by mechanical power registered in the district of Alaska, or not paying license or tax elsewhere, and river and lake steamers, as well as transportation lines doing business wholly within the district of Alaska, one dollar per ton per annum on net tonnage, custom-house measurement, of each vessel.

"Gas plants, for heat or light, for sale, three hundred dollars per annum.

"Hotels, fifty dollars per annum.

"Halls, public, ten dollars per annum.

"Insurance agents and brokers, twenty-five dollars per annum.

"Jewelers, twenty-five dollars per annum.

"Mines: Quartz mills, three dollars per stamp per year.

"Mercantile establishments: Doing a business of one hundred thousand dollars per annum, five hundred dollars per annum; doing a business of seventy-five thousand dollars per annum, three hundred and seventy-five dollars per annum; doing a business of

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fifty thousand dollars per annum, two hundred and fifty dollars per annum; doing a business of twenty-five thousand dollars per annum, one hundred and twenty-five dollars per annum; doing a business of ten thousand dollars per annum, fifty dollars per annum; doing a business of under ten thousand dollars per annum, twenty-five dollars per annum; doing a business of under four thousand dollars per annum, ten dollars per annum.

"Meat markets, fifteen dollars per annum.

"Manufactories not enumerated herein, same classification and license charges as mercantile establishments.

"Physicians, itinerant, fifty dollars per annum.

"Planing mills, fifty dollars per annum when not part of a sawmill.

"Pawnbrokers, three hundred dollars per annum.

"Peddlers, twenty-five dollars per annum.

"Patent-medicine venders (not regular druggists), fifty dollars per annum.

"Railroads, one hundred dollars per mile per annum on each mile operated.

"Restaurants, fifteen dollars per annum.

"Real estate dealers and brokers, fifty dollars per annum.

"Ships and shipping: Ocean and coastwise vessels doing local business for hire plying in Alaskan waters, registered in Alaska or not paying license or tax elsewhere, one dollar per ton per annum on net tonnage, custom-house measurement, of each vessel.

"Sawmills, ten cents per thousand feet on the lumber sawed.

"Steam ferries, one hundred dollars per year.

"Toll road or trail, two hundred dollars per annum.

"Tobacconists, fifteen dollars per annum.

"Tramways, ten dollars for each mile or fraction thereof per annum.

"Transfer companies, fifty dollars per annum.

"Taxidermists, ten dollars per annum.

"Theaters, one hundred dollars per annum.

"Waterworks, furnishing water for sale, fifty dollars per annum."

SEC. 461. (30 Stat. 1337): That any person, corporation, or company doing or attempting to do business in violation of the provisions of the foregoing section, or without having first paid the license therein required, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined, for the first offense, in a sum equal to the license required for the business, trade, or occupation; and for the second offense, a fine equal to double the amount of the license required; and for the third offense, three times the license required and imprisonment for not less than thirty days nor more than six months: *Provided*, That each day business is done or attempted to be done in violation of the preceding section shall constitute a separate and distinct offense: *And provided further*, That any person, firm, or corporation hitherto engaged in any business within the said district of Alaska mentioned in the last preceding section, or that may engage in such business at any time prior to the first day of July, anno Domini eighteen hundred and ninety-nine, shall not be deemed to have violated the provisions of this section and the last preceding section if, in the opinion of the court or judge thereof, such person, firm, or corporation shall not have had reasonable time and opportunity to apply for license as hereinbefore required.

2. Jurisdiction of United States commissioners and justices of the peace in the trial of misdemeanors.

SEC. 408 (30 Stat., p. 1330). That in addition to the commissioners appointed by the President of the United States in pursuance of acts of Congress now in force, or that may be hereafter enacted, the judge of the district court of said district may appoint commissioners, who shall reside at such places as he may designate in the order of appointment, and who shall perform the duties and exercise the powers conferred upon justices of the peace by this act.

SEC. 410. That a justice's court has jurisdiction of the following crimes:

First. Larceny, where the punishment therefor may be imprisonment in the county jail or by fine.

Second. Assault, or assault and battery, not charged to have been committed with intent to commit a felony, or in the course of a riot, or with a dangerous weapon, or upon a public officer in the discharge of his duties.

Third. Of any misdemeanor punishable by imprisonment in the county jail, or by fine, or by both.

SEC. 412. That in a justice's court a criminal action is commenced by the filing of the complaint therein, verified by the oath of the person commencing the action, who is thereafter known as the private prosecutor; and no judgment of conviction or acquittal can be given in a criminal action in justice's court unless the person injured appear or be subpœnaed to attend the trial as a witness.

SEC. 413. That the complaint is to be deemed an indictment within the meaning of the provisions of chapter seven, title two, of this act, prescribing what is sufficient to be stated in such pleading and the form of stating it.

3. A jury trial may be waived by the accused when tried before a United States commissioner.

SEC. 417 (30 Stat., p. 1331). That the defendant may plead the same plea as upon an indictment. His plea must be oral and entered in the docket. If the defendant refuse to plead, the justice must enter the fact, together with the plea of not guilty, on his behalf.

SEC. 418. That upon a plea other than a plea of guilty, *if the defendant do not then demand a trial by jury the justice must proceed to try the issue.*

4. Pleadings allowed upon the trial of criminal cases.

SEC. 88 (30 Stat., p. 1294). That the only pleading on the part of the defendant is either a demurrer or plea.

SEC. 91. That the demurrer must be in writing, signed either by the defendant or his attorney, and filed. It must distinctly specify the ground of objection to the indictment, or it may be disregarded.

SEC. 97. That if the demurrer be disallowed, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow; *but if he do not plead, judgment must be given against him.*

5. Issues of law and fact, how tried.

SEC. 108 (30 Stat., p. 1296). That an issue of fact arises—

First. Upon a plea of not guilty; or,

Second. Upon a plea of former conviction or acquittal of the same crime.

SEC. 109. That an issue of law arises upon a demurrer to the indictment.

SEC. 110. That an issue of law must be tried by the court, and an issue of fact by jury, of the political division in which the action is triable.

SEC. 111. That if the indictment be for a misdemeanor, the trial may be had in the absence of the defendant, if he appear by counsel; but if it be for a felony, he must be present in person.

6. Provisions relative to appeals in criminal cases from justice courts to the United States district court for the district of Alaska.

SEC. 441 (30 Stat., p. 1334). That an appeal may be taken from a judgment of conviction given in a justice's court, in a criminal action, to the district court, except when the same is given on a plea of guilty, as prescribed in this chapter, and not otherwise.

SEC. 449. That from the filing of the transcript with the clerk of the district court the appeal is perfected, and the action is to be deemed pending therein and for trial upon the issue tried in the justice's court. The appellate court has the same authority to allow an amendment of the pleadings, on an appeal in a criminal action, that it has on an appeal in a civil action.

7. The mode of trial in appellate court. (On a demurrer same as in case of an indictment.)

SEC. 97 (30 Stat., p. 1295). That if the demurrer be disallowed, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow; but if he do not plead, judgment must be given against him.

8. Writs of error to the United States Supreme Court.

SEC. 202 (30 Stat., p. 1307). That appeals and writs of error in criminal actions may be taken and prosecuted from the decisions and judgments of the district court for the district of Alaska to the Supreme Court of the United States, or to the circuit court of appeals for the ninth circuit, in the same manner and under the same regulations as from the circuit and district courts of the United States, under the acts of Congress now in force or that may be hereafter enacted.

APPENDIX B.

ALASKA BEFORE THE TREATY.

Kinkead v. *United States*, 150 U. S., 483. Mr. Justice Brown said in this case, respecting the government of Alaska (p. 490):

> It appeared that the Territory of Alaska had, prior to its cession to the United States, been occupied by a Russian corporation known as the Russian-American Company, a corporation largely engaged in fur trading. This company had the privilege of making use of the public lands and erecting buildings thereon. It had no right, however, of becoming the owner of such lands, but did have the privilege of conveying parcels of it in fee simple to its employees. Pursuant to this privilege, it had made conveyance of certain of these lands to its employees, upon which had been constructed the dwellings erected by the company and occupied by such employees, their widows or children. Apparently, however, it had no right to acquire for itself any title to the soil, and enjoyed nothing more than the use of the land upon which its buildings were situated, the dominion or right of property therein remaining in the Russian Government. The company appears to have possessed not only the ordinary powers of a trading corporation, but certain governmental powers, which it exercised arbitrarily, if not despotically, over the entire territory. It had a monopoly of the trade of the territory, and appears to have been in fact a provincial government of the Russian Empire.

By the first article His Majesty the Emperor of all the Russias agrees to cede to the United States all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within certain geographical limits set forth in the article.

By the second article there are included in this cession of territory and dominion the right of property in all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private individual property.

Property belonging to the Greek Oriental Church was excluded from the cession. Government archives relative to the territory and dominion are to be left in the possession of the United States, but another copy is to be furnished to the Russian Government.

The third article provided:

> The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.

By the fourth article provisions are made for the formal delivery of the territory; but it is provided that the cession, with the right to immediate possession, is

nevertheless to be deemed complete and absolute on the exchange of ratifications.

Article V provides for the delivery of the fortifications or military posts and for the withdrawal of Russian troops.

By the sixth article the United States agrees to pay, within ten months after the exchange of the ratifications, $7,200,000 in gold.

> The cession of territory and dominion herein made is hereby declared to be free and unencumbered by any reservations, privileges, franchises, grants, or possessions, by any associated companies, whether corporate or incorporate, Russian or any other, or by any parties, except merely private individual property holders; and the cession hereby made conveys all the rights, franchises, and privileges now belonging to Russia in the said territory or dominion, and appurtenances thereto.

VARIOUS ACTS OF CONGRESS FOR THE GOVERNMENT OF ALASKA SUBSEQUENT TO THE TREATY AND PRIOR TO THE CRIMINAL CODE OF MARCH 3, 1899.

Act of July 27, 1868 (15 Stat. L., 240).

By the act of July 27, 1868 (15 Stat. L., 240), the laws of the United States relating to customs, commerce, and navigation, so far as applicable, were extended to and over Alaska (sec. 1). All of this territory was constituted a customs collection district, with a port of entry to be established at or near Sitka (2). The Secretary of the Treasury was authorized to make regulations for the naturalization of vessels owned by residents of Alaska at the time of its cession (3). The President was given power to regulate or prohibit the importation and use of fireams, ammunition, and distilled spirits. (Sec. 4.)

The coasting trade between Alaska "and any other portion of the United States" was to be regulated according to the laws of the United States (5). The killing of fur-bearing animals was prohibited (6). Violations of law were to be prosecuted in the United States courts in Oregon, California, or Washington (7). The Secretary of the Treasury may prescribe regulations for carrying into effect this act, except the provisions intrusted to the President alone.

Act of May 17, 1884 (23 St., 24).

The act of May 17, 1884 (23 St., 24), constituted Alaska a civil and judicial district, with the seat of government at Sitka (1). A governor was provided, charged with the interest of the United States Government arising within the district, with authority to see that the laws are enforced. Power was given him to grant reprieves pending the decision of the President (2). A district court was established, with civil and criminal jurisdiction of district courts of the United States, and such other jurisdiction as may be established by law. Two terms of the court each year, one at Sitka and the other at Wrangel, were provided. The judge was given authority "to make allowances for necessary expenses of his court" (3).

> SEC. 4. That a clerk shall be appointed for said court, *who shall be ex officio secretary and treasurer of said district*, a district attorney, and a marshal, all of whom shall during their terms of office reside therein. The clerk shall record and preserve copies of all the laws, proceedings, and official acts applicable to said district. *He shall also receive all moneys collected from fines, forfeitures, or in any other manner except from violations of the custom laws, and shall apply the same to the incidental expenses of the said district*

court and the allowances thereof, as directed by the judge of said court, and shall account for the same in detail, and for any balances on account thereof, quarterly, to and under the direction of the Secretary of the Treasury.

By section 5 four commissioners were provided, with the civil and criminal jurisdiction of justices of the peace in Oregon. They were also given jurisdiction in testamentary and probate matters. They were also given power to grant writs of habeas corpus, returnable before the district judge. They had powers of notaries public. Fines and forfeitures collected by them were to be paid over to the clerk. Four deputy marshals were provided for, with authority of United States marshals and powers and duties of constables under the laws of Oregon (6). The general laws of Oregon were made the laws of the district, so far as applicable. Writs of error in criminal cases were to issue to the United States circuit court of Oregon. Final judgments were reviewable by the Supreme Court of the United States (7).

Alaska was created a land district, with certain special provisions (8). The salaries and fees of various officers were established and it was provided that the laws of the United States not locally inapplicable should be extended to the district, but there should be no legislative assembly nor any Delegate (9.)

Act May 14, 1898 (30 Stat., 409).

The act of May 14, 1898 (30 Stat., 409), provides for the extension of the homestead laws to Alaska, and for the granting of right of way through the lands of the United States in that district to any railroad company, upon certain conditions. Rates and fares in Alaska are to be printed and posted as required by the

interstate commerce act, and are subject to revision and modification by the Secretary of the Interior (sec. 2). The act also contains provisions for the grant of rights of way for wagon roads and tramways (sec. 6). Provisions are made for the purchase of Government land by residents upon certain terms (sec. 10). Also for the sale of timber (sec. 11). The privilege of entering goods in bond, and of withdrawing them for exportation to Canada, is granted to the government of Canada and its citizens.

APPENDIX C.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, November 8, 1901.

Hon. JAMES M. BECK,
Assistant Attorney-General.

SIR: In reply to your request of the 31st ultimo, relative to the appropriations for Alaska and the disposition of the Government's revenues from the Territory, I submit the following statement:

Appropriations.	1900.	1901.
Salaries of governor, etc	$31,000.00	$70,035.72
Contingent expenses of Territory	2,000.00	2,000.00
Salaries of surveyor-general, etc	3,800.00	10,300.00
Contingent expenses, office of surveyor-general	1,000.00	1,500.00
Traveling expenses of Territory	2,852.00	3,000.00
Rent, office of marshal	10,000.00	14,500.00
Education of children	30,000.00	30,000.00
Education of Indians	5,000.00	.....
Reindeer for Alaska	25,000.00	26,133.53
Supplies for native inhabitants	19,500.00	19,500.00
Refuge station at Point Barrow	106.67	.....
Salaries of agents at seal fisheries	12,950.00	12,950.00
Protection of salmon fisheries	7,000.00	7,000.00
Expenses of inspectors of pelagic seal skins	.....	110.00
Maps of Alaska	18.50	.....
Care and custody of insane	.....	356.21
Repairs and expenses of steamer *Thetis*	70,000.00	.....
Expenses of revenue vessels in Alaskan waters	132,800.00	188,500.00
Customs Service [a]	52,367.79	58,245.89
Internal-Revenue Service [a]	3,850.00	3,650.00
Light-House Service	.....	100,000.00
Expenses of United States courts [a]	55,700.00	339,500.00
Salaries and commissions, land offices [a]	3,000.00	5,200.00
Indian schools	7,000.00	7,000.00
Total	474,944.96	899,481.35

[a] Estimated.

In the foregoing statement the "estimated" amounts given are the approximate expenditures from general appropriations for the Alaskan service, as far as it is possible to separate them with the data on hand.

The item of "Expenses of United States courts" for 1901 includes receipts by judicial officers which are disbursed directly by them under the provisions of the act of June 6, 1900, section 7 (31 Stat., 324), without being covered into the Treasury, and which do not appear in the following statement of receipts.

Receipts.	1900.	1901.
From customs	$57,623.62	$86,593.15
From internal revenue	13,601.96	19,725.02
From sales of public lands	2,376.32	1,889.66
From tax on sealskins	224,476.47	229,755.75
From rent of islands for propagating foxes	1,200.00	2,900.00
From license fees and fines	157,234.94	147,255.33
Total	456,513.31	488,118.91

For the fiscal year 1900 the license fees were deposited in the Treasury in one sum without subdivision, no separate data thereon being furnished. For the fiscal year 1901 the fees and costs, fines and penalties, and a portion of the license fees were deposited in one sum, amounting to $63,167.43; and the remainder of the license fees, amounting to $84,087.90, were separately covered into the Treasury. Correspondence with the clerk of the United States district court in Alaska established the fact that the information necessary to subdivide the first of the foregoing items for 1901 could not be obtained at that time.

For the fiscal year 1902 the receipts from licenses, fees and costs, fines, penalties, etc., are being covered into the Treasury under instructions of the honorable

Attorney-General (see Supplemental Instructions to Clerks of the District Court of Alaska, May 1, 1901) under separate heads, as follows:

1. "*License fees collected in incorporated towns*," being one-half of the total collections on this account, covered into the Treasury as provided in the act of March 3, 1899, 30 Stat., page 1336, the remaining 50 per cent of these collections being paid over to the treasurer of the corporation for school purposes, under the provisions of the acts of June 6, 1900, 31 Stat., page 521, section 203, and March 3, 1901, 31 Stat., page 1438.

2. "*License fees collected outside of incorporated towns*," being the full amount collected on this account, 50 per cent of which is appropriated and becomes available for school purposes outside of corporate limits, under the direction of the Secretary of the Interior, as provided in the act of March 3, 1901, 31 Stat., page 1438.

3. "*Funds other than license fees available for court expenses*," being the balance of the receipts of this class after the payment therefrom (before deposit is made) of certain court expenses authorized by the judge of the district court, covered into the Treasury under section 7 of the act of June 16, 1900, 31 Stat., page 324.

The receipts under these separate heads for the current fiscal year to date are as follows:

1. License fees collected in incorporated towns	$9,463.30
2. License fees collected outside of incorporated towns	20,822.16
3. Funds other than license fees available for court expenses	3,507.10

Respectfully,

M. E. AILES,
Assistant Secretary.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, November 29, 1902.

Hon. J. K. RICHARDS,
Solicitor-General, Department of Justice,
Washington, D. C.

SIR: Referring to your communication of the 24th instant relative to the statement of appropriations for Alaska and of the revenues collected in the Territory for the years 1900 and 1901, furnished to the Department of Justice by Department letter of November 8, 1901, and in reply to your request for an additional statement bringing the information down to date, I submit the following:

Appropriations.	1902.	1903.
Salaries of governor, etc	$52,625.00	$51,500.00
Contingent expenses of Territory	2,000.00	2,000.00
Salaries of surveyor-general, etc	8,000.00	8,000.00
Contingent expenses, office of surveyor-general	1,500.00	1,500.00
Traveling expenses of Territory	5,000.00	5,000.00
Rent, etc., office of marshal	10,000.00	10,096.50
Reindeer for Alaska	25,000.00	25,000.00
Supplies for native inhabitants	19,500.00	15,000.00
Salaries of agents at seal fisheries	12,950.00	12,950.00
Protection of salmon fisheries	7,000.00	7,000.00
Expenses, inspectors of pelagic seal skins	100.00	100.00
Care and custody of insane	3,918.76	926.26
Light-House Service	200,000.00	126,013.00
Internal-Revenue Service	2,210.00	2,700.00
Indian schools	7,000.00	7,000.00
Transportation of destitute miners and citizens	920.00	8,550.00
Schools outside of incorporated towns	35,882.41	[a] 50,000.00
Salaries and commissions, land offices	8,617.65	[a] 9,000.00
Expenses of revenue vessels in Alaskan waters	120,000.00	[a] 150,000.00
Customs Service	[a] 66,292.43	[a] 65,000.00
Expenses of United States courts	[a] 378,000.00	[a] 400,000.00
Total	966,516.25	957,335.76

[a] Estimated.

In the foregoing statement the "estimated" amounts given are the approximate expenditures from general appropriations for the Alaskan service, as far as it is possible to separate them with the data on hand.

The items of "Expenses of United States courts" include receipts by judicial officers which were disbursed directly by them under the provisions of the act of June 6, 1900 (31 Stat., p. 324, sec. 7), without being covered into the Treasury, and do not appear in the receipts as stated below.

The expense of revenue vessels in Alaskan waters is estimated by the revenue-marine division on the basis of a five months' cruise in 1902 and six months in 1903.

Receipts.	1902.	First quarter 1903.
From customs	$62,682.47	$29,510.53
From internal revenues	23,281.17	85.66
From sales of public lands	5,819.96	190.00
From tax on sealskins	231,821.20	(a)
From rent of islands for propagating foxes		100.00
License fees (balance of 1901 receipts)	1,477.49	
License fees collected in incorporated towns	22,463.30	26,985.00
License fees collected outside of incorporated towns	71,864.22	24,510.26
Funds other than license fees available for court expenses	8,523.39	7,814.89
Funds not available for court expenses	3,173.53	
Total	431,106.73	89,196.34

[a] The revenues from this source are usually received and covered into the Treasury during the third quarter of the fiscal year.

The inclosure to your letter is herewith returned.

Respectfully,

M. E. AILES,
Assistant Secretary.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, March 10, 1904.

Hon. M. D. PURDY,
Assistant Attorney-General.

SIR: In reply to your communication of the 9th instant I transmit herewith the following statement of

appropriations for Alaska for the fiscal year 1904 and of the revenues collected in the Territory for the fiscal year 1903 and the first half of the fiscal year 1904:

Appropriations.	1904.
Salaries of governor, etc	$51,500.00
Contingent expenses of Territory	2,000.00
Salaries of surveyor-general, etc	8,000.00
Contingent expenses, office of surveyor-general	1,500.00
Traveling expenses of Territory	5,000.00
Incidental expenses of Territory	5,000.00
Reindeer for Alaska	25,000.00
Supplies for native inhabitants	15,000.00
Salaries, agents at seal fisheries	12,950.00
Protection of salmon fisheries	7,000.00
Expenses, inspectors of pelagic-seal skins	100.00
Light-house service	200,000.00
Internal-revenue service	5,450.00
Indian schools	7,000.00
Transportation of destitute citizens	5,140.10
Court-house and jail at Juneau	15,000.00
Site for military post at Skagway	500.00
Military telegraph and cable lines	2,500.00
Alaska exhibit, St. Louis Exposition	50,000.00
Care and custody of the insane	[a] 8,000.00
Salaries and commissions, land offices	[a] 9,000.00
Schools outside of incorporated towns	[a] 50,000.00
Expenses, revenue vessels in Alaskan waters	[a] 160,000.00
Customs service	[a] 65,000.00
Expenses of the United States courts	[a] 500,000.00
Total	1,210,640.10

[a] Estimated.

In the foregoing statement the "estimated" amounts given are the approximate expenditures from general appropriations for the Alaskan service, as far as it is possible to separate them with the data on hand.

The items of "Expenses of United States courts" include receipts by judicial officers which were disbursed directly by them under the provisions of the act of June 6, 1900 (31 Stat., p. 324, sec. 7), without being covered into the Treasury, and do not appear in the receipts as stated below.

Receipts.	1903.	Six months of 1904.
Customs	$70,938.66	$22,853.04
Internal revenue	17,494.58	[a] 9,000.00
Sales of public lands	2,286.56	2,626.46
Tax on sealskins	286,133.40	.....
Rent of islands for propagating foxes	100.00	200.00
License fees collected in incorporated towns	26,985.00	23,931.78
License fees collected outside incorporated towns	46,413.98	40,921.81
Funds other than license fees available for court expenses	7,814.89	2,556.79
Funds other than license fees not available for court expenses	2,311.35	12,287.47
Customs fees, fines, etc	4,547.44	3,204.15
Rent of Government buildings, etc	2,451.04	1,753.45
Registers' and receivers' fees	505.04	255.67
Miscellaneous	35.10	39.36
Total	468,017.04	119,629.98

[a] Estimated.

The tax on sealskins is usually received and covered into the Treasury during the third quarter of the fiscal year.

The brief inclosed in your letter is herewith returned as requested.

Respectfully, C. H. KEEP,
Assistant Secretary.

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